

**STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION**

Bulletin 2010-20-CF

In the Matter of

Motor Vehicle Installment Sales
Practice of Spot Delivery

**Issued and entered
this 16th day of December 2010
by Ken Ross
Commissioner**

The purpose of this bulletin is to address the motor vehicle installment sales practice of "spot delivery" as it relates to the Motor Vehicle Sales Finance Act (MVSFA), 1950 PA 27 (Ex. Sess.), MCL 492.101 *et seq.* and the Consumer Protection Act (CPA), 1976 PA 331, MCL 445.901, *et seq.*

Overview

The practice of "spot delivery" occurs when a buyer and seller sign an installment sales contract for sale of a motor vehicle and the buyer takes delivery of the vehicle "on the spot," prior to the seller obtaining financing from an end lender. The practice originated in the years when credit reporting agencies only kept normal business hours. Thus, if a motor vehicle seller wished to sell an automobile via an installment sales contract on a weekend or after hours (when the majority of shopping occurred), the sale would have been delayed until the prospective buyer's credit could be checked for installment sale financing approval. To solve this problem, sellers invented the practice of spot delivery, which allowed a buyer to take possession pursuant to the subsequent credit verification.

The buyer agrees, usually by signing a rider to the contract, that the contract is void if the dealer does not assign the contract within a certain number of days. Although the buyer has possession of the automobile, if the seller determines the contract cannot be assigned, the buyer must either return the vehicle to the seller, pay full price for the vehicle (i.e. the contract is accelerated), or face repossession. In practice, the seller contacts the buyer, explains that the financing was not approved and demands the vehicle be returned or it will be repossessed.

Authority under the MVSFA

The Financial Institutions Bureau (FIB), now known as the Office of Financial and Insurance Regulation (OFIR), addressed the issue of "spot delivery" in 1989. At that time, FIB considered

spot deliveries coercive, unconscionable, and predatory on impulse buyers. The bureau cited the MVSFA, which stated that “[a]n installment sale contract shall not contain an acceleration clause under which any part or all of the time balance represented by payments, not yet matured, may be declared immediately payable because the seller or holder deems itself to be insecure.” MCL 492.114(b).

Failure to locate financing or an assignee on the part of the seller generates insecurity in the seller which induces the seller to void or accelerate the contract. This is manifestly contrary to the aforementioned portion of the MVSFA.

Furthermore, the MVSFA states that “[n]o act, agreement or statement of any buyer in any installment sale contract shall constitute a valid waiver of any provision of this act intended by the legislature for the benefit or protection of retail installment buyers of motor vehicles.” MCL 492.132.

Thus, an installment sales contract that requires the buyer to assent to a spot delivery acceleration clause if the seller fails to assign the contract is inconsistent with the MVSFA.

Authority under the CPA

Michigan’s Consumer Protection Act includes several provisions applicable to spot delivery practices that would render the seller’s actions “unfair, unconscionable, or deceptive,” and thus violate the CPA. MCL 445.903(1).

By inducing a buyer to sign an installment sales contract containing a spot delivery provision, the seller may have represented that he has approval (as to the financing and assignment) that he does not have, in violation of MCL 445.903(1)(c), which deems illegal “[r]epresenting that goods or services have ... approval ... or that a person has ... approval ... that he or she does not have.”

By executing an installment sales contract with a buyer that the seller knows is subject to credit approval or the procurement of financing, the seller may have “caus[ed] a probability of confusion or of misunderstanding with respect to the authority of a salesperson ... to negotiate the final terms of a transaction.” MCL 445.903(1)(m). This confusion or misunderstanding is evident when the buyer is forced to return the motor vehicle or make a higher payment; often the buyer has purchased the motor vehicle because the agreed-upon rate and payment was the maximum the buyer could afford. Had the buyer known the payment could escalate, he would likely have not accepted delivery of the motor vehicle.

There are several other subsections of the CPA that would also make the practice of spot delivery illegal:

- MCL 445.903(1)(n): “Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.”
- MCL 445.903(1)(o): “Causing a probability of confusion or of misunderstanding as to the terms or conditions of credit if credit is extended in the transaction.”

- MCL 445.903(1)(s): "Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer."
- MCL 445.903(1)(y): "Gross discrepancies between the oral representations of the seller and the written agreement covering the same transaction or failure of the other party to the transaction to provide the promised benefits."

Conclusion

Spot delivery practices engaged in by motor vehicle installment sellers violate the Motor Vehicle Sales Finance Act, and one or more provisions of the Consumer Protection Act.

Any questions regarding this bulletin should be directed to:

Office of Financial and Insurance Regulation
Licensing and Product Review Division
611 West Ottawa Street – 3rd Floor
P.O. Box 30220
Lansing, Michigan 48909-7720
Toll Free: (877) 999-6442



Ken Ross
Commissioner